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BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

In the Matter of Application of

MK Airlines Limited

for an exemption pursuant to 49 U.S.C. § 40109
from the provisions of 49 U.S.C. § 41301
(Ghana-U.S. all-cargo charters).

Docket OST-99-6032-10

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DEPT OF TRANSPORTATION
DOCKETS

ANSWER OF ARROW AIR, INC.
TO APPLICATION OF MK AIRLINES LIMITED
FOR RENEWAL OF EXEMPTION

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July 1, 2004

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MK Airlines Limited	:	Docket OST-99-6032
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(Ghana-U.S. all-cargo charters).	:	
	:	

Arrow Air, Inc. (“Arrow”) hereby answers the above-captioned application of MK Airlines Limited (“MK Air”) filed with the Department of Transportation (the “Department”) on June 16, 2004 for renewal of its exemption authority to operate charter foreign air transportation of property and mail. Arrow objects to the renewal of authority to conduct 7th Freedom cargo flights and waiver of the requirement of 14 CFR § 212.9(b)(1) that it obtain prior approval of such flights. The application does not provide sufficient information upon which the Department can or should act to grant the relief requested. Arrow urges the Department not to apply the automatic extension provisions of the Administrative Procedure Act (5 U.S.C. § 558(c) and Part 377 of the Department’s rules (14 CFR Part 377)) to the 7th Freedom portion of MK Air’s application. In support hereof, Arrow respectfully represents and alleges as follows:

1. MK Air's exemption renewal application does not contain pertinent information required by the Department's regulations. There is no factual statement of how MK Air proposes to use the renewed authority, including a statement of places to be served; equipment types, capacity, type and frequency of service, which is at least the minimum required. MK Air provides no service between Ghana and the U.S. Its operations in the U.S. have been wholly between a point or points in the U.S. and points in third countries. There has been no limit on these operations, even to the extent of a prior approval requirement. The resulting operations have been extremely harmful to U.S. all-cargo air carriers and to Arrow itself because of the concentration of MK Air's operations at Miami. MK Air should be required to disclose to the Department, and the U.S. carriers with which it competes, where and how it intends to operate under the provisions of the U.S.-Ghana Bilateral Air Transport Agreement.

2. The renewal application and the related filing, Amendment Number 2 to the Application of MK Airlines Limited for a Foreign Air Carrier Permit, Docket OST-99-6033, to which answers are due July 9, 2004, raise serious considerations about the bona fides of MK Air, its ownership, administration and control. There does not appear to be a genuine Ghana connection; MK Air is being run from Sussex, England and not from Ghana. It presumably has been operating in accordance with the Air Transport Agreement between the U.S. and the Republic of Ghana authorizing 7th Freedom service for Ghanaian carriers designated under Article 3(1.), which Article provides for designations to be transmitted in writing through diplomatic channels specifying the type of transportation to be provided. However, the information available in the public record of these applications does not disclose a designation

of MK Air by the Republic of Ghana until April 8, 2004. The basic validity of MK Air's entire 7th Freedom services is in doubt. There is therefore a valid question of whether MK Air can invoke the automatic extension provisions of § 558(c) of the Administrative Procedure Act under circumstances where the basic authority it seeks to extend is, itself, invalid.

3. MK Air has been engaged in substantial 7th Freedom services from the U.S. to third countries. As shown in the T-100 reports filed with the Department, in 2003 MK Air reported 494 departures carrying 48,198,181 pounds of cargo. MK Air operates a scheduled all-cargo service between Miami and Peru every Monday, Wednesday and Friday via the routing Miami-Lima-Miami. It carries significant volumes of cargo in both directions causing harmful diversion of traffic and revenue from Arrow and other U.S. all cargo air carriers. See Attachment 1 hereto. MK Air operates a weekly scheduled all-cargo service over a routing Miami-Port of Spain, Trinidad-Georgetown, Guyana-Paramaribo, Suriname and return to Miami adding to the harmful impact on Arrow. MK Air conducts other flights, scheduled and charter, in and out of Miami. It is a *de facto* U.S. air carrier without benefit of oversight from the FAA.


4. The continuation of authority to MK Air, under the present circumstances, indeed under any circumstances, of unrestricted, unlimited all cargo service between any and all points in the United States and any and all points in third countries is a severe threat to Arrow and to every other U.S. flag all-cargo air carrier. It is Arrow's belief that unconditioned continuation of MK Air's current operations would be inconsistent with the statutory

provisions relating to both All-Cargo Air Transportation and International Air Transportation contained in Section 40101 of 49 U.S. Code-Transportation. The unconditioned continuation of authority to MK Air to operate to any and all points in the U.S. to/from any and all points in third countries is simply not justifiable when it is measured against the fact that there is no comparable benefit of similar magnitude for Arrow if Arrow were to be granted access to any and all points in Ghana and points in third countries.

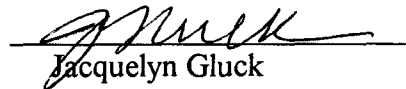
5. The unlimited and unconditioned 7th Freedom operations by MK Air have been harmful to Arrow and other U.S. certificated all cargo carriers by causing severe revenue traffic diversion and loss of revenues and profit potential. A weakened U.S. all-cargo air transportation system would not be consistent with the policy provision of the statute and, particularly at this time, consistent with the national defense of the United States and its security interests. Instead of promoting, encouraging, and developing civil aeronautics and a viable, privately-owned United States air transport industry, the grant of the MK Air application in the form proposed would have the opposite effect. The Department must not renew and extend the exemption authority of MK Air without further information so that the Department can impose proper conditions and limitations on the services proposed. Until MK Air discloses where it will operate, to and from, the volume of frequencies, the type of aircraft, and the nature of the traffic to be carried, the Department cannot make an evaluation as to how the service of MK Air will impact the environment, the U.S. all cargo industry generally, including Arrow, and the military preparedness of the U.S. all cargo airlines.

WHEREFORE, Arrow Air, Inc. respectfully requests that the Department of Transportation, in consideration of all of the foregoing, require applicant MK Airlines Limited to comply with the procedural regulations and submit the information required by an amendment to its applications and that any authority granted to MK Airlines Limited be properly limited and conditions so as to be consistent with the statutory policy provisions set forth in 49 U.S.C. - Transportation, and that the Department of Transportation take such other and further action, consistent with the premises herein, as it may determine is in the public interest.

Respectfully submitted,



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July 1, 2004

CERTIFICATE OF SERVICE

I certify that I have this 1st day of July, 2004 served the foregoing Answer of Arrow Air, Inc. to the Application of MK Airlines Limited for Renewal of Exemption, Docket OST-99-6032, by email on persons named below.


Jacquelyn Gluck

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MK Airlines - Scheduled Service U.S.-Peru

<u>Month</u>	<u>Flights</u>	(Lbs) <u>U.S. Exports</u>	(Lbs) <u>U.S. Imports</u>
November 2003	11	575,132	1,064,431
December 2003	13	446,319	1,245,612
January 2004	10	690,597	964,446
February 2004	11	720,746	1,023,860
March 2004	11	854,379	1,061,836
April 2004	13	851,974	1,226,639
May 2004	13	971,998	1,263,639

MK operates scheduled service every Monday, Wednesday & Friday
on the route MIA-LIM-MIA